

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF WATER SERVICE)
CORPORATION OF KENTUCKY FOR AN) CASE NO. 2013-00237
ADJUSTMENT OF RATES)

ORDER REGARDING REQUEST FOR CONFIDENTIAL TREATMENT

On December 13, 2013, Water Service Corporation of Kentucky ("WSKY") moved, pursuant to 807 KAR 5:001, Section 13, that certain materials filed with the Commission be afforded confidential treatment and not be placed in the public record subject to public inspection.

In support of its petition, WSKY states that the information it is requesting to be held confidential is contained in its Responses to the Attorney General's ("AG") Initial Request for Information, Item Nos. 34(f), 43, 50, and 90, and Commission Staff's Second Request for Information, Item No. 19. The information is described as tax records; reports, assessments, and evaluations prepared by Deloitte Consulting to assist in the decision making process regarding Project Phoenix; and salary information of WSKY's corporate employees. WSKY is requesting that the information be held confidential in perpetuity, as disclosure would result in an unwarranted invasion of personal privacy and an unfair commercial advantage to its competitors.

The tax records for which WSKY seeks confidential treatment meet the criteria for protection and are exempted from public disclosure, pursuant to KRS 61.878(1)(k) and 807 KAR 5:001, Section 13, and should not be placed in the public record or made available for public inspection for an indefinite period of time.

WSKY's request for confidential treatment of corporate employee salaries is overbroad. WSKY does not have any employees. Utilities, Inc., WSKY's parent corporation, employs the individuals who provide services to WSKY.¹ Corporate employee salaries of Utilities, Inc. are allocated to WSKY based on a formula regarding the number of equivalent residential connections.

In response to the AG's request for salary information, WSKY filed two schedules. One schedule contains corporate employee names and salary information of the Utilities, Inc. staff that either work in Kentucky or are customer service representatives. WSKY requests confidential protection for the names of the staff on that schedule. WSKY asserts that the employees' salary information is of a personal nature. WSKY's request for redaction of corporate employee names that either work in Kentucky or are customer service representatives meets the criteria for confidential treatment, pursuant to KRS 61.878(1)(a) and 807 KAR 5:001, Section 13.

The other schedule identifies corporate employees that do not work in Kentucky or are not customer service representatives by non-descript numbers, which have no names along with salary information for the remaining corporate Utilities, Inc. employees. For this schedule, WSKY requests that it be granted confidential protection in its entirety, claiming disclosure would result in an unfair commercial advantage to its competitors. WSKY cites to KRS 61.878(1)(c)(1),² and *Am. Postal Workers Union, AFL-CIO v. U.S. Postal Serv.*, 742 F. Supp 2d 76 (D.D.C. 2010), to support its request to

¹ Water Service Corporation, WSKY's sister corporation, may also have employees providing services to WSKY.

² KRS 61.878(1)(c)(1) exempts from inspection "records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records."

prevent disclosure of any salary information for corporate employees of Utilities, Inc. other than the salaries of employees who either work in Kentucky or are customer service representatives.

The records sought in the *American Postal Workers Union* case were recent pay for performance (“PFP”) bonus and pay increases identified by employee name, level, title, PFP lump-sum amount, and PFP wage increase.³ The United States Postal Service was concerned that release of bonus and pay increase information would allow competitors to recruit talented employees from the United States Postal Service.⁴ Publication of salary information without employee names prevents any unfair commercial advantage.

Furthermore, WSKY is seeking to recover the portion of Utilities, Inc.’s salaries allocated to WSKY. WSKY ratepayers have a right to know the salaries being paid and how the salaries are being allocated.

WSKY has further requested confidential treatment for information contained in various documents prepared by Deloitte Consulting to assist in the decision making process for Project Phoenix, pursuant to KRS 61.878(1)(c)(1), claiming that disclosure would result in an unfair commercial advantage to WSKY and Deloitte Consulting competitors. Based on a review of the information and pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13, the Commission has determined that the documents prepared by Deloitte Consulting to assist WSKY’s parent corporation in the decision-making process regarding Project Phoenix are of a proprietary nature, which if publicly

³ *Am. Postal Workers Union* at 78.

⁴ *Id.* at 82-83.

disclosed would permit an unfair commercial advantage to competitors of WSKY and its parent corporation, Utilities, Inc.

Having carefully considered the petition and the materials at issue, the Commission finds that:

1. The request to treat tax returns as confidential meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to KRS 61.878(1)(k) and 807 KAR 5:001, Section 13.

2. The request to redact the names of Utilities, Inc.'s corporate employees either working in Kentucky or as customer service representatives from the schedule containing those employees' salaries meets the criteria for confidential treatment and the names should be exempted from public disclosure pursuant to KRS 61.878(1)(a) and 807 KAR 5:001, Section 13.

3. The request to redact in its entirety the schedule containing non-descript numbers and all salary information pertaining to corporate employees of Utilities, Inc., based on KRS 61.878(1)(c)(1), as an unfair commercial advantage to competitors is overbroad and should be denied because the salary information without employee names is not an unfair commercial advantage to competitors.

4. The request to treat as confidential the documents prepared to assist in the decision-making process regarding Project Phoenix meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. WSKY's motion to treat tax returns as confidential is hereby granted for an indefinite period of time, or until further Orders of the Commission.

2. WSKY's motion to treat as confidential the names of Utilities, Inc.'s corporate employees either working in Kentucky or as customer service representatives as shown on the schedule containing their salary information is hereby granted for an indefinite period of time, or until further Orders of this Commission.

3. WSKY's motion to redact as confidential in its entirety the schedule containing employee numbers and salaries for Utilities, Inc. corporate employees who do not work in Kentucky or do not work as a customer service representative is denied.

4. WSKY's motion to protect as confidential the information used in the decision-making process to implement Project Phoenix is hereby granted for an indefinite period of time, or until further Orders of this Commission.

5. When the materials granted confidentiality pursuant to ordering paragraph 1, 2, and 4 above are used in any Commission proceeding, they shall be in compliance with 807 KAR 5:001, Section 13(9).

6. Movant shall inform the Commission if the materials in question become publicly available or no longer qualify for confidential treatment.

7. If a non-party to this proceeding requests to inspect materials granted confidential treatment by this Order, and the period during which the materials have been granted confidential treatment has not run, the Movant shall have 20 days from receipt of written notice of the request to demonstrate that the materials still fall within the exclusions from disclosure requirements established in KRS 61.878. If Movant is

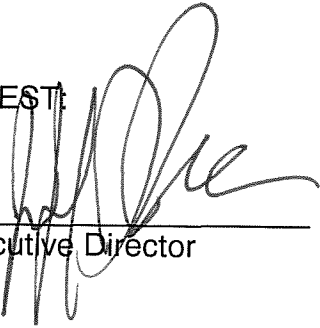
unable to make such demonstration, the requested materials shall be made available for inspection. Otherwise the Commission shall deny the request for inspection.

8. The materials denied confidential treatment shall be withheld from public inspection for 20 days from the date of this Order to allow WSKY to seek any remedy afforded by law.

By the Commission

ENTERED
JUN 24 2014
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

Case No. 2013-00237

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